

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of Soitec Solar Industries LLC for
Modification of Resolution E-4613.

Application 14-12-008
(Filed December 5, 2014)

**RESPONSE OF SAN DIEGO GAS AND ELECTRIC COMPANY (U 902 E)
TO APPLICATION OF SOITEC SOLAR INDUSTRIES LLC FOR
MODIFICATION OF RESOLUTION E-4613**

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TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. BACKGROUND	2
III. DISCUSSION	9
A. The Record Related to Approval of the Tenaska PPA does not Support Adoption of Soitec’s Proposed Procurement Mandate.....	9
B. The PPA Approval Process is Not the Proper Forum for Consideration of the Proposed Procurement Mandate.....	11
C. The Application is an Improper Collateral Attack on D.14-11-042 and D.14-04-004	13
i. Collateral Attacks on Commission Decisions are Prohibited	13
ii. The Application is an Improper Collateral Attack on D.14-11-042	14
iii. The Application is an Improper Collateral Attack on D.14-04-004.....	15
D. The Harm Purportedly Caused to Soitec Arises from Contract Revisions Approved in Resolution E-4446 Rather than Resolution E-4613 Identified in the Application	16
E. The Commission Should Closely Scrutinize the Factual Claims Included in the Application.....	19
IV. CONCLUSION	20

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Integrate and
Refine Procurement Policies and Consider Long-
Term Procurement Plans.

Rulemaking 12-03-014
(Filed March 22, 2012)

**RESPONSE OF SAN DIEGO GAS AND ELECTRIC COMPANY (U 902 E)
TO APPLICATION OF SOITEC SOLAR INDUSTRIES LLC FOR
MODIFICATION OF RESOLUTION E-4613**

**I.
INTRODUCTION**

Pursuant to Rule 16.4(f) of the Rules of Practice and Procedure of the California Public Utilities Commission (the “Commission”), San Diego Gas & Electric Company (“SDG&E”) provides this response to the *Application of Soitec Solar Industries LLC for Modification of Resolution E-4613* (the “Application”) filed by Soitec Solar Industries LLC (“Soitec”). The Application requests modification of Resolution E-4613, in which the Commission approved certain amendments to a power purchase agreement (“PPA”) between SDG&E and CSolar IV West, LLC. (“Tenaska”). Specifically, Soitec proposes in the Application that the Commission modify Resolution E-4613 to impose solely upon SDG&E a mandate to procure up to 150 MW from concentrating solar photovoltaic (“CPV”) resources. Soitec’s Application is entirely lacking in merit and should be rejected.

As discussed in more detail below, Soitec’s application should be denied on the grounds that: (i) the record of the underlying proceeding does not support adoption of the procurement mandate proposed by Soitec; (ii) an advice letter proceeding approving a specific contract is not the proper forum for consideration of the proposed procurement mandate; (iii) the Application is an improper collateral attack on Decisions (“D.”) 14-11-042 and D.14-04-004; and (iv) the harm

purportedly caused to Soitec arises from a contract amendment approved in Resolution E-4446 rather than from the amendment approved in Resolution E-4613, thus Soitec has failed to seek modification of the proper Resolution. In addition, SDG&E urges the Commission to closely scrutinize the factual claims made by Soitec in the Application in order to ensure the accuracy of the evidentiary record.

While SDG&E challenges the reasonableness of and need for the procurement mandate proposed by Soitec, it remains supportive of Soitec as a market participant in California. It has continued to encourage Soitec to present opportunities to SDG&E, inviting Soitec to bid into SDG&E's current all-source request for offers ("RFO") for capacity. SDG&E notes that Soitec has in fact indicated an interest in participating in SDG&E's all-source capacity RFO; Soitec submitted its bidder registration for the all-source RFO on December 17, 2014.

II. BACKGROUND

The factual background of the transaction at issue in the Application is somewhat complex. Indeed, the PPAs for Soitec-related transactions – which include the PPA between SDG&E and Tenaska (the "Tenaska PPA") and five PPAs between SDG&E and five separate Soitec subsidiaries (together, the "Soitec PPAs") – have been amended to accommodate Soitec a total of 24 times. A complete understanding of the facts underlying the Application may be of assistance to the Commission in considering the relief requested by Soitec. Accordingly, SDG&E sets forth below a detailed description of Soitec's role in the transaction and the impact of its actions on the timeline of the transaction, and more generally of Soitec's conduct as a market participant in California.

The PPA between SDG&E and Tenaska (the “Tenaska PPA”) is a 25-year agreement for generation from a new 96-150ac megawatt (“MW”) solar facility to be constructed in Imperial County, California.^{1/} The Tenaska PPA originally contemplated construction of the project using CPV panels manufactured in San Diego County. While Soitec was not a party to the Tenaska PPA, it was the understanding of SDG&E (and presumably Tenaska and Soitec) at the time the Tenaska PPA was entered into that Soitec (which is currently the only local manufacturer of CPV panels in the San Diego area) would likely supply the CPV panels for the project. This was not, however, a requirement under the Tenaska PPA.

SDG&E entered into the Tenaska PPA in March, 2011. Shortly thereafter, SDG&E separately entered into five PPAs with five separate Soitec subsidiaries (“Soitec PPAs”) to develop, construct and operate electric generating facilities utilizing CPV technology.^{2/} The Tenaska PPA and Soitec PPAs were the result of bilateral negotiations occurring at the same time as negotiation of other PPAs from SDG&E’s 2009 Renewable Portfolio Standard (“RPS”) RFO. These PPAs were evaluated and compared against the other PPAs from SDG&E’s 2009 RPS RFO to ensure that price, terms and conditions were comparable to the then-current market conditions.

Shortly after execution of the Tenaska PPA and the Soitec PPAs, SDG&E submitted the PPAs to the Commission for approval.^{3/} While the advice letters seeking approval were before the Commission, changes in market conditions resulted in a significant drop in renewable energy

^{1/} The original Tenaska PPA along with its First Amendment was approved in Resolution E-4446 adopted on December 15, 2011.

^{2/} The Soitec PPAs are five separate 25- year agreements for generation from new solar facilities to be constructed in Boulevard and Borrego Springs, California using CPV panels manufactured by Soitec. The projects are: LanEast, LanWest, Desert Green, Rugged and Tierra Del Sol. The Soitec PPAs along with their First Amendments were approved in Resolution 4439 adopted on November 10, 2011.

^{3/} Approval of the Tenaska PPA was requested in Advice Letter 2257-E, E-A and E-B. Approval of the Soitec PPAs was sought in Advice Letter 2270-E, E-A.

prices from the levels bid into SDG&E's 2009 RPS solicitation. In response to this price drop, and at the Commission's urging, SDG&E invited its counterparties, including Tenaska and Soitec, to re-price their PPAs in order to improve the likelihood of Commission approval.

In the first amendment to the Tenaska PPA, SDG&E and Tenaska agreed, *inter alia*, to: (i) reduce the pricing for Tenaska's project built with locally-sourced CPV panels by 2%; (ii) a provision permitting Tenaska to change the technology used to build the project to standard PV panels in the event the local CPV panel supply was not commercially available; and (iii) a price reduction of 20% if Tenaska elected to build its project with standard PV panels rather than CPV panels. Thus, while the price for the project using CPV was reduced, it was still much higher than the price of the project using standard PV technology.^{4/} The Commission approved the Tenaska PPA with these modifications in Resolution E-4446 adopted on December 15, 2011.^{5/}

In 2012, Tenaska informed SDG&E that the project construction timeline would be delayed due to difficulties in negotiations between Soitec and Quanta Power Group ("Quanta"), the engineering, procurement, and construction ("EPC") contractor proposed by Soitec. Soitec and Quanta had been unable to reach agreement on the terms of an equipment supply agreement, without which the CPV panels could not be installed and construction of the project could not be completed. In response, in order to provide necessary time and flexibility to Tenaska, SDG&E and Tenaska entered into a second amendment to the Tenaska PPA to extend the commercial operation deadline and other milestone dates and to require Tenaska to use diligent efforts to

^{4/} Indeed, a peer review of the Energy Department grant to Soitec raised concerns regarding the high cost of CPV technology and the company's ability to compete against lower-cost standard PV technology. U.S. Department of Energy Report, *SunShot Initiative: 2014 Peer Review Report*, August 2014, pp. 238-239, available at: http://energy.gov/sites/prod/files/2014/09/f18/2014_sunshot_peer_review_report.pdf.

^{5/} The Soitec PPAs were similarly modified to reduce the contract price by 2-4%. The Commission approved the Soitec PPAs with the reduced pricing in Resolution E-4439 adopted on November 10, 2011.

negotiate an EPC contract using CPV technology. SDG&E submitted this second amendment to the Commission for approval in Advice Letter 2487-E in June, 2013.

Later in 2013, while Commission approval of Advice Letter 2487-E was still pending, Tenaska notified SDG&E that given Soitec's continuing failure to reach agreement with Quanta on an equipment supply agreement, Tenaska intended to exercise its election to change the project technology to 100% PV panels. Instead of moving away from CPV technology, SDG&E and Tenaska worked to amend the PPA to include a target 67 MW quantity of CPV panels to be used in constructing the project. In order to compensate Tenaska for the higher costs of Soitec CPV panels, the PPA was further amended to provide additional value (effectively increasing the contract price) for the portion of the project built with Soitec CPV panels and to further reduce the PPA pricing if the project were to be constructed with fewer than the target 67 MW of CPV panels. The PPA thus incited the use of CPV panels, but contemplated the possibility that CPV technology would not be used by Tenaska to construct the project. These PPA modifications were effected through an amended and restated second amendment to the PPA, which also provided additional time for completion of the project. SDG&E withdrew the original second amendment (proposed in Advice Letter 2487-E) and submitted the amended and restated second amendment to the Commission for approval in Advice Letter 2487-E-A, which was approved by the Commission in Resolution E-4613.

In January of 2014, Quanta sought to withdraw from the negotiation process with Soitec, but ultimately re-engaged.^{6/} Finally, in March, 2014, after attempting unsuccessfully to negotiate with Soitec for over 16 months, Quanta notified Tenaska that it was not able to reach an acceptable equipment supply agreement with Soitec and that it was terminating negotiations on

^{6/} See Attachment A hereto - Correspondence dated April 14, 2014 from Barton Ford, CSolar IV West, LLC, to Edward Randolph, Energy Division Director, California Public Utilities Commission ("Tenaska Letter").

the CPV EPC Contract.^{7/} Following receipt of this notice, Tenaska notified SDG&E that it would build the project with 100% standard PV technology.^{8/} Tenaska observed that “[t]his has been a complicated, difficult process for everyone, and all three parties have tried hard to get to an EPC contract that can work . . . [b]ut it has become clear that the schedule no longer works.”^{9/} It noted further that “Quanta is not willing to commit to the necessary construction schedule unless Soitec posts substantial additional security in order to cover the Soitec default exposure for the compressed schedule . . . Soitec is not willing or is not able to post the additional security that is required.”^{10/} Thus, as permitted under the Tenaska PPA, Tenaska elected to construct its project using only standard PV panels and no Soitec CPV panels with a 25% price reduction.

As the volume of PPA amendments would tend to indicate, the pattern of delay by Soitec in negotiating its equipment supply agreement presented a significant challenge to timely completion of the Tenaska project. In late 2012, around the time concerns regarding Soitec’s delay in finalizing an equipment supply agreement initially came to light, the target date for completion of the Soitec equipment supply agreement was March 21, 2013. This target date was successively pushed back to May, June, July, October, November, December of 2013 then January, February and March of 2014 to accommodate Soitec.^{11/} Soitec’s failure to reach agreement with Quanta had a domino effect on other contract milestone dates – *e.g.*, the target financial closing date was delayed by a year – which jeopardized completion of the project.

In detailing the challenges related to the negotiations with Soitec regarding the equipment supply agreement, Tenaska pointed out to the Commission that “[t]hroughout the three year period since the PPA was signed SDG&E has been extremely proactive in seeking to assist and

^{7/} *Id.*, Attachment 1.

^{8/} *Id.*, Attachment 3.

^{9/} *Id.*, Attachment 5, p. 2.

^{10/} *Id.*

^{11/} See Attachment A hereto - Tenaska Letter, note 2.

encourage [Tenaska] to be successful in its efforts to incorporate Soitec's technology in the project."^{12/} SDG&E's accommodation of Soitec is also demonstrated by the support and flexibility it provided to Soitec in the context of the five Soitec PPAs approved in Resolution E-4439. In 2013, Soitec requested an amendment to the Soitec PPAs to permit Soitec to move its projects from the Boulevard area to the Imperial Valley, as well as to provide for an extension of certain dates in the PPAs. SDG&E agreed to this request and amended the Soitec PPAs in the second and third amendments to incorporate these modifications, and to require the use of Soitec CPV panels in the projects. These amendments were approved by the Commission in Resolution E-4637.

In early 2014, Soitec again approached SDG&E seeking amendments to the four PPAs located in Boulevard, California. In this case, Soitec stated that it was nearing completion on negotiations with a third party to take assignment of the PPAs for construction in Imperial County, but that additional time was necessary to permit Soitec to complete the negotiations. In February 2014, SDG&E and Soitec entered into the fourth amendment to the four Soitec PPAs to provide more time to Soitec to complete its assignment. In March 2014, Soitec sold its Desert Green project to Invenergy and SDG&E consented to that sale under the terms of the Desert Green PPA.

At the time SDG&E and Soitec entered into the fourth amendment to the four Soitec PPAs, SDG&E advised Soitec that it did not wish to consider any further amendments to the PPAs. Notwithstanding this, Soitec requested in August 2014 that SDG&E amend its PPAs a fifth time to extend deadlines, assign the four PPAs to a different third party for construction in Imperial Valley and relocate at least one of the projects to Blythe. SDG&E indicated that the level of modifications requested by Soitec would require further approvals by the Commission

^{12/} *Id.*, p. 2.

and that SDG&E was not willing to pursue such approvals unless Soitec was willing to reset the pricing provisions to reflect current market conditions. Soitec indicated that it was not willing to amend the PPAs in this fashion and was not willing to subject itself to further Commission scrutiny.

Shortly thereafter, in September 2014, Soitec requested SDG&E's consent to Soitec's assignment of its four PPAs to a new third-party developer (Soitec's fourth potential assignee). Under the third and fourth amendments to the Soitec PPAs, the deadline for completion of this assignment was September 30, 2014. Although Soitec had not finalized its arrangements for a complete unconditional assignment by this date, SDG&E nevertheless consented to the conditional assignment to this new third-party developer. Under the terms of the conditional assignment – which was agreed to and executed by Soitec and the new third party developer, and consented to by SDG&E – the third party developer had the right to voluntarily terminate any of the four PPAs. It elected to terminate one of the four PPAs on November 28, 2014 in lieu of posting additional credit support for that PPA. In addition, under the conditional assignment, the PPAs would automatically terminate if the third-party developer was unable to release the new project site from other unrelated PPAs by December 19, 2014. The third-party developer did not meet this condition and the remaining three PPAs have now terminated.

The significant effort undertaken by SDG&E to assist Soitec and to facilitate construction of CPV solar resources is clear. As recently as this month, SDG&E offered its public support for Soitec's projects, submitting letters to San Diego County Board of Supervisors and the County Planning Commission urging the expeditious issuance of Major Use permits for the Soitec

projects located in Boulevard.^{13/} In addition, in a December 4 communication to Soitec, SDG&E noted its commitment to the development of renewable projects in San Diego County and brought to Soitec’s attention the issuance of SDG&E’s all-source RFO for capacity. Thus, Soitec continues to have opportunities to compete in California; its ability to do so, however, remains contingent upon its ability to offer a competitively priced product^{14/} and commercially reasonable equipment supply arrangements. Absent this, SDG&E does not believe that Soitec can successfully participate in the development of new CPV facilities.

III. DISCUSSION

A. The Record Related to Approval of the Tenaska PPA does not Support Adoption of Soitec’s Proposed Procurement Mandate

The Tenaska PPA, as originally submitted to the Commission, contemplated construction of a 96 to 150 MWac project with 100% CPV technology. Soitec argues that Resolution E-4613, which approved, *inter alia*, an amendment to the Tenaska PPA that reduced the project’s reliance on CPV technology, should now be modified to require “procurement of electricity from [CPV] technology in a quantity at least equivalent to the CPV capacity that was expected to be deployed in the original [PPA].”^{15/} In other words, Soitec proposes that the Commission modify Resolution E-4613 to impose solely upon SDG&E a mandate to procure up to 150 MW from CPV resources. Soitec’s proposal to impose a technology-specific mandate on SDG&E must be

^{13/} See Attachment B hereto – Correspondence dated December 4, 2014 from James P. Avery, SDG&E, to Chairwoman Dianne Jacob, San Diego County Board of Supervisors; Correspondence dated December 4, 2014 from James P. Avery, SDG&E, to Chairman Peder Norby, San Diego County Planning Commission. SDG&E’s support for these projects was offered prior to the termination of the related PPAs on December 19, 2014.

^{14/} As noted above, a peer review of the Energy Department grant to Soitec identified the ability to achieve competitive pricing as a key challenge faced by Soitec. *See, supra*, note 4.

^{15/} As discussed in Section II hereof, Resolution E-4613 approved amendment of the Tenaska PPA to include a target 67 MW quantity of CPV panels to be used in constructing the project.

rejected. The record developed in connection with Commission approval of the Tenaska PPA is not adequate to support a finding by the Commission that imposition of a technology-specific mandate such as that proposed by Soitec would serve the public interest.

As Soitec notes, it was anticipated that the Tenaska project using 100% CPV technology would provide economic and employment benefits in the San Diego area, and bring valuable resource diversity to SDG&E's renewable portfolio.^{16/} These benefits arising from use of CPV technology were considered by the Commission in the context of an analysis of the total benefits and obligations associated specifically with the Tenaska PPA. The Commission's evaluation of whether the proposed PPA was in the public interest was based upon consideration of several factors including consistency with SDG&E's RPS Procurement Plan, consistency with SDG&E's Least-Cost, Best-Fit ("LCBF") requirements, cost reasonableness, and project viability.^{17/} While the Commission found that, taken as a whole, the Tenaska PPA was reasonable and in the public interest, it did not consider any evidence or reach any determination regarding the reasonableness of any potential transaction outside of the Tenaska PPA; its finding of reasonableness was specific to the transaction presented. It certainly did not consider or seek to address the question of whether the benefits associated with use of CPV technology are so great that a procurement-specific mandate related to such technology should be adopted.

While Soitec claims that its proposed procurement mandate would "help save jobs, boost the San Diego economy, and promote technological diversity in California," it provides no analysis, much less verifiable evidence, regarding the costs associated with imposition of the proposed mandate on SDG&E, its impact on system reliability or other relevant considerations. Because it is required under Rule 16.4(b) to limit its factual allegations to those that can be

^{16/} Application, p. 2.

^{17/} See Resolution E-4446, p. 6.

supported by the record in the proceeding,^{18/} it is unable to provide this analysis since none was presented in connection with the advice letters seeking approval of the Tenaska PPA and subsequent amendments. Plainly, the record related to approval of the Tenaska PPAs is not adequate to support Commission adoption of Soitec's proposal to modify Resolution E-4613 to adopt a technology-specific mandate for SDG&E. Accordingly, Soitec's proposal must be rejected.

B. The PPA Approval Process is Not the Proper Forum for Consideration of the Proposed Procurement Mandate

Commission General Order ("G.O.") 96-B makes clear that the advice letter process is appropriate only for "requests that are expected neither to be controversial nor to raise important policy questions."^{19/} As discussed above, the focus of the PPA advice letter approval process is limited to consideration of a specific proposed transaction. Nevertheless, Soitec presents its proposal for adoption of a new SDG&E-specific procurement mandate – a request that is both controversial and certain to raise important policy questions – in an advice letter proceeding. Plainly, this is not the appropriate procedural vehicle for presentation of Soitec's proposal. Thus, the Application should be rejected.

The RPS rulemaking proceeding is the proper forum for issues related to the Commission's continuing administration and oversight of the RPS program.^{20/} In its RPS proceeding, the Commission has previously considered proposed technology-specific mandates, including, most recently, Senate Bill ("SB") 1122,^{21/} which requires the investor-owned utilities ("IOUs") to procure mandated quantities of RPS-eligible generation from facilities using

^{18/} Rule 16.4(b) requires that ". . . Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed . . ."

^{19/} G.O. 96-B, §5.1.

^{20/} *Scoping Memo and Ruling of Assigned Commissioner*, issued July 8, 2011 in R.11-05-055, p. 2.

^{21/} Senate Bill ("SB") 1122, (Stats. 2012, Ch. 612).

specified types of bioenergy. As is clear from the Commission's prior consideration of RPS procurement mandates, adoption of a technology-specific mandate requires careful consideration of a variety of issues including the specifics of the pricing mechanism and whether it complies with federal and state law, as well as other factors such as the overall benefit to ratepayers, relative cost, potential market impacts and viability of the proposed technology.

Similarly, the Commission's Long-Term Procurement Plan ("LTPP") proceeding is intended to "ensure a reliable and cost-effective electricity supply in California through integration and refinement of a comprehensive set of procurement policies, practices and procedures underlying long-term procurement plans."^{22/} The LTPP proceeding considers the long-term capacity needs of the IOUs. To the extent resources relying on CPV technology are able to provide local or system capacity, a technology-specific mandate such as that proposed by Soitec might be considered in the LTPP proceeding.

Evaluation of Soitec's proposal in a forum that allows deliberate and comprehensive consideration of the myriad issues raised in connection with such a request is critical. It is not clear, for example, exactly what benefits would be conferred on ratepayers by a generic mandate to procure CPV resources. Soitec claims that the proposed procurement mandate would "restore the quantity of Soitec CPV panels that Soitec assumed would be deployed in the Project . . .," and further that the proposal would "help save jobs, boost the San Diego economy, and promote technological diversity in California."^{23/} Thus, it appears that Soitec's proposal is intended at least in part to benefit its own market position. This would be an important area of inquiry since the Commission's obligation is to further the public interest rather than to provide an advantage to particular market participants.

^{22/} *Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge*, issued May 14, 2014 in R.05-05-055, p. 2.

^{23/} Application, pp. 7-8.

With regard to Soitec's assertion that the proposal to mandate procurement of CPV technology would provide economic benefits to the San Diego region, while it is possible that this would be the case, it would be necessary to explore the extent of the benefit provided and whether the cost associated with deployment of the CPV technology is justified by any such benefit.^{24/} Finally, it is not clear what rationale, if any, exists to support imposition of the proposed mandate solely on SDG&E, particularly given SDG&E's current lack of RPS need.^{25/} If, as Soitec claims, the procurement mandate would promote technological diversity statewide, allocation of the cost of such procurement solely to SDG&E ratepayers is unreasonable.

Because Soitec improperly presented its proposal in the context of the Tenaska PPA advice letter proceeding, it is not possible to explore these and other important issues. In addition, by offering its proposal in the context of a PPA-specific Resolution, and failing to serve either the RPS service list or the LTPP service list, Soitec effectively excluded many stakeholders who would be affected by adoption of Soitec's proposal. Given Soitec's flawed and improper procedural approach, the Application should be denied.

C. The Application is an Improper Collateral Attack on D.14-11-042 and D.14-04-004

i. Collateral Attacks on Commission Decisions are Prohibited

The Commission has defined a collateral attack as "an attempt to invalidate the judgment or order of the Commission in a proceeding other than that in which the judgment or order was rendered."^{26/} Section 1709 of the Public Utilities Code establishes that "[i]n all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive." Under Commission Rules of Practice and Procedure, parties may challenge a

^{24/} SDG&E notes that the Tenaska PPA remains in effect and that SDG&E ratepayers will continue to derive anticipated benefits therefrom.

^{25/} See D.14-11-042, *mimeo*, Conclusion of Law ("COL") 18, Ordering Paragraph ("OP") 17.

^{26/} D.07-04-017, *mimeo*, p. 8.

Commission determination by filing an application for rehearing or a petition for modification.^{27/} Collateral attacks on Commission decisions, however, are prohibited.^{28/} The California Supreme Court has observed that the "conclusiveness arises by operation of law. It is the order and not the reasons for it that establishes its effectiveness."^{29/}

ii. The Application is an Improper Collateral Attack on D.14-11-042

In the Commission's recently-adopted RPS Plan decision, D.14-11-042, the Commission concluded that SDG&E is not required to issue a solicitation for RPS procurement during the next procurement cycle. It found that based on SDG&E's current levels of RPS procurement and lack of RPS need, "it is reasonable to approve of SDG&E's request not to hold a 2014 solicitation."^{30/} While SDG&E remains obligated to undertake procurement of small projects through its Renewable Auction Mechanism ("RAM") and Renewable Market Adjusting Tariff ("Re-MAT") programs, the decision expressly finds that SDG&E is not obligated to undertake other RPS procurement during the time period covered by the 2014 solicitation cycle (*i.e.*, 2015).^{31/}

While Soitec had the opportunity to present its technology-specific procurement mandate proposal in the phase of the RPS proceeding that addressed SDG&E's draft RPS Plan, and to file comments on the proposed decision that approved SDG&E's request to refrain from RPS procurement during the next procurement cycle (other than RAM/Re-MAT procurement), it did not elect to do so. Instead, it now seeks through a separate proceeding to impose an RPS

^{27/} See Rules 16.1 and 16.4.

^{28/} See, e.g. D.08-04-063, D.07-10-015, D.07-04-017, D.07-03-047.

^{29/} *People v. Western Air Lines, Inc.*, 42 Cal.2d 621, 632-633 (1954) .

^{30/} D.14-11-042, *mimeo*, COL 18.

^{31/} *Id.* at OP 17. This authorization to not hold a solicitation only applies for the next solicitation cycle (one year); the Commission will revisit SDG&E's need to conduct an RPS solicitation in its future decision on SDG&E's 2015 RPS Plan. *Id.*

procurement requirement on SDG&E that stands in direct conflict with the findings and action ordered in D.14-11-042.

It is clear that Soitec's proposal to require SDG&E to procure up to 150 MWac from a CPV resource is "an attempt to invalidate the judgment or order of the Commission in a proceeding other than that in which the judgment or order was rendered."^{32/} Thus, the Commission should reject as a collateral attack on D.14-11-042 Soitec's attempt to relitigate the settled issue of whether SDG&E is required to undertake (non-RAM/Re-MAT) RPS procurement during the next procurement cycle and deny the Application.^{33/}

iii. The Application is an Improper Collateral Attack on D.14-04-004

In D.14-03-004, issued in Track 4 of the LTPP proceeding, the Commission ordered SDG&E to issue an all-source solicitation for 500-800 MW of long-term local capacity, including at least 25 MW from energy storage resources and 175 MW from preferred resources.^{34/} Soitec did not elect to participate in Track 4 of the LTPP and did not present its proposal to require SDG&E to procure up to 150 MWac of capacity from CPV resources. Instead, it now seeks to impose this procurement mandate through a separate advice letter proceeding.

It is clear that Soitec's proposal to mandate procurement of up to 150 MWac of capacity from CPV resources is a collateral attack on D.14-03-004 – it is an attempt to invalidate the Commission's order in Track 4 of the LTPP, which did not include this mandate, through

^{32/} See D.07-04-017, *mimeo*, p. 8.

^{33/} While Soitec remains free to submit bids into SDG&E's RAM/Re-MAT programs, the RPS Plan decision did not adopt a specific mandate to procure CPV resources within these programs. Thus, to the extent Soitec's proposed procurement mandate is intended to apply to RAM/Re-MAT, it is inconsistent with and a collateral attack on D.14-11-042.

^{34/} D14-03-004, *mimeo*, OP 2.

modification of an unrelated Resolution.^{35/} In addition, Soitec's proposal is untimely as it relates to SDG&E's Track 4 all-source RFO for capacity. In accordance with its Commission-approved Track 4 procurement plan, SDG&E issued its all-source capacity RFO on September 5, 2014, with bids due on January 5, 2015. Accordingly, while Soitec is free to bid resources into the all-source solicitation, its proposal to impose a procurement mandate at this point is infeasible and improper. The Commission should find that Soitec's Application is an improper collateral attack on D.14-03-004 and deny it on that basis.

D. The Harm Purportedly Caused to Soitec Arises from Contract Revisions Approved in Resolution E-4446 Rather than Resolution E-4613 Identified in the Application

Rule 16.4(e) of the Commission's Rules of Practice and Procedure requires a petitioner who was not a party to the proceeding in which modification is sought to "state specifically how the petitioner is affected by the decision and why the petitioner did not participate in the proceeding earlier." Soitec, which did not participate in the advice letter proceeding that approved the Tenaska PPA and its subsequent amendments, provides the following explanation for its failure to participate in the underlying proceeding: "the Amended PPA approved by [Resolution E-4613] contemplated using CPV panels in the project, thereby creating demand for panels manufactured by Soitec. Soitec thus had no reason to protest or respond to SDG&E's Advice Letters."^{36/} Soitec's explanation exposes a significant flaw in the rationale it presents in the Application to justify modification of Resolution E-4613.

Soitec suggests in the Application that modification of Resolution E-4613 is necessary to offset the harm caused by Tenaska's decision to change the project technology used to build the project from Soitec's CPV panels to 100% standard PV panels. However, the harm purportedly caused to Soitec is not the result of the contract revision approved by the Commission in

^{35/} See D.07-04-017, *mimeo*, p. 8.

^{36/} Application, p. 9.

Resolution E-4613. As discussed above, Resolution E-4613 approved amendment of the Tenaska PPA to include a target 67 MW quantity of CPV panels to be used in constructing the project. Soitec admits that it had no reason to protest or respond to this contract revision since it contemplated that CPV panels would be used in the Tenaska project.^{37/}

The harm purportedly caused to Soitec arises from Tenaska's exercise of the provision in the Tenaska PPA that allows Tenaska to change the project technology from CPV technology to PV technology. It was exercise of this right by Tenaska that resulted in elimination of CPV technology from the project and frustration of Soitec's "expectation that there would be 305 MW of CPV panels deployed in projects under contract to SDG&E, **including the 150 MW project that has now been converted to the PV-only Project through the Amended [Tenaska] PPA.**"^{38/} The provision permitting Tenaska to convert the technology from CPV to PV was not approved by the Commission in Resolution E-4613. Rather, it was approved in Resolution E-4446.

Resolution E-4446 approved the first amendment to the Tenaska PPA (the "First Amendment"), in which SDG&E and Tenaska agreed, *inter alia*, to amend the PPA to include a provision permitting Tenaska to change the technology used to build the project to standard PV panels in the event the CPV panel supply was not commercially available.^{39/} Thus, the modification proposed by Soitec is relevant to the action taken in Resolution E-4446 and Soitec's Application should have sought modification of that Resolution, if any. Soitec did not, however,

^{37/} *Id.*

^{38/} Declaration of Clark Crawford attached to Application, p. 1-2, Par. 7 (emphasis added).

^{39/} See Tenaska PPA Section 2.4(c).

submit a protest to SDG&E's Advice Letter submitting the First Amendment for Commission approval.^{40/} Nor did Soitec submit a protest to the Commission draft Resolution approving the First Amendment, which was ultimately approved as Resolution E-4446.

While the modification sought in Soitec's Application properly relates to Resolution E-4446, the issuance date of Resolution E-4446 was December 15, 2011, which means that Soitec is well outside the one-year window for seeking modification of a Commission order established in Rule 16.^{41/} Requests for modification outside this one-year window must "explain why the petition could not have been presented within one year of the effective date of the decision."^{42/} Even if, *assuming arguendo*, the Application correctly identified Resolution E-4446 as the Commission Resolution requiring modification, the Application would be improper inasmuch as Soitec cannot establish that it was not possible for it to identify the potential harm that could arise from the First Amendment at the time it was approved in Resolution E-4446. It is clear that the issue presented by Soitec was a foreseeable outcome of the Commission's approval of the First Amendment. Any reasonable reading of the Tenaska PPA as amended by the First Amendment would have revealed the possibility that Tenaska could at some point exercise its right to eliminate CPV technology from the project. Thus, Soitec cannot claim that the issue it raises now was only recently made evident.^{43/}

Plainly, Soitec's Application is procedurally flawed. The Resolution it seeks to modify is not the source of the concerns it raises in the Application. In addition, Soitec fails to demonstrate that it was not possible for it to raise its concerns regarding the potential harm

^{40/} Advice Letters 2257-E, E-A and E-B.

^{41/} See Rule 16.4(d).

^{42/} *Id.*

^{43/} See, e.g., D.14-12-023, *mimeo*, p. 63.

caused by the First Amendment at an earlier point, in compliance with the Commission's Rules of Practice and Procedure. Accordingly, the Application should be denied.

E. The Commission Should Closely Scrutinize the Factual Claims Included in the Application

As discussed above, the evidentiary record developed in connection with approval of the Tenaska PPA does not establish the need for a procurement mandate such as that proposed by Soitec. Similarly, the record of the underlying advice letter proceeding does not establish that Soitec was harmed by Tenaska's exercise of its right to eliminate CPV technology from the project. The only factual evidence presented to the Commission regarding the harm caused to Soitec is contained in the Declaration of Clark Crawford attached to the Application. The claims offered by Mr. Crawford are not, however, entirely consistent with statements made by Soitec in other forums concerning the impact of Tenaska's decision. Accordingly, SDG&E recommends that the Commission carefully examine the statements made by Soitec to ensure a factually accurate record.

In a Soitec French financial report dated May 13, 2014, for example, Soitec reported that it had 173 employees and 20 contract workers at its San Diego manufacturing facility as of March 31, 2014.^{44/} In the Application, however, Soitec inflates this number, claiming that it has "hired 250 people to date to work at its facility in San Diego."^{45/} In addition, in a Soitec financial report filed *after* Tenaska's elimination of CPV technology from its project, Soitec reported that it had 47 MW_{PEAK} of projects under construction, 267 MW_{PEAK} of projects with PPAs (a portion of this amount relates to the assigned Soitec PPAs that have now been terminated), and

^{44/} See Attachment C hereto - *Soitec Reference Document and Annual Financial Report 2013-2014*, p. 54.

^{45/} Application, pp. 6-7; Declaration of Clark Crawford, p. 1-2, Par. 10.

approximately 300 MW_{PEAK} of projects with a reasonable probability of PPAs.^{46/} The projections included on Soitec's financial report do not support the premise of the Application – *i.e.*, that the challenges experienced by Soitec are the result of elimination of CPV technology from the Tenaska project.

Given the disparities between the factual assertions made in the Application and statements made by Soitec in its financial reports, the Commission should closely scrutinize the claims made by Soitec in the Application to ensure the accuracy of the Commission's evidentiary record.

IV. CONCLUSION

For the reasons set forth herein, the Application should be denied.

Dated this 22nd day of December, 2014 in San Diego, California.

Respectfully submitted,

/s/ Aimee M. Smith
AIMEE M. SMITH

101 Ash Street, HQ-12
San Diego, California 92101
Telephone: (619) 699-5042
Facsimile: (619) 699-5027
amsmith@semprautilities.com

Attorney for
SAN DIEGO GAS & ELECTRIC COMPANY

^{46/} See Attachment D hereto – *Soitec 2014-2015 Financial Report H1 Results*, dated November 19, 2014 at 15.

ATTACHMENT A
Correspondence dated April 14, 2014

April 14, 2014

Mr. Edward Randolph
Director, Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Comments made at April 10, 2014 California Public Utilities Commission Meeting Regarding the 150 MW Power Purchase Agreement (as amended, the “PPA”) between San Diego Gas & Electric Company (“SDG&E”) and CSolar IV West, LLC (“CSOLAR”)

Dear Mr. Randolph,

At the conclusion of your short report on the technology selection for the CSOLAR PPA, there were some questions and comments from certain Commissioners, and then a request by Commissioner Picker that you report briefly at the CPUC meeting on May 1 if there are any new developments.

In order to enable a more complete basis for any update on this subject, CSOLAR provides the following information.

1. PPA Terms Relevant to Conversion to 100% Standard PV Technology. Your prepared statement indicated that the PPA allowed Tenaska to switch to 100% standard PV technology (rather than a mix of PV technology and Soitec’s CPV technology¹) under very limited circumstances. The relevant PPA provision is Section 2.4(c).

Section 2.4(c) permits CSOLAR to construct the project with 100% standard PV panels if it provides notice that CSOLAR has not been able to enter into financeable “EPC Contracts” or Soitec has not entered into an equipment supply agreement with the “CPV EPC Contractor,” by November 30, 2013 or such later date, if any, determined by CSOLAR to be reasonably practicable.

On March 28, 2014 Quanta Power Group, the prospective CPV EPC Contractor with whom Soitec had been working for over 16 months, notified CSOLAR that it was unable to reach an acceptable equipment supply agreement with Soitec and was terminating negotiations with CSOLAR on the CPV EPC Contract. Copies of this notice to CSOLAR and Quanta’s separate notice to Soitec are attached.

Following receipt of Quanta’s notice terminating negotiation of the CPV EPC Contract, CSOLAR provided the notice to SDG&E under Section 2.4(c) that it would build the project with 100% standard PV technology. This notice is also attached.

Quanta’s termination of negotiations on March 28, 2014 was not the first time that Quanta dropped out of the project.² Two months earlier, on January 27, 2014, Quanta also gave notice that it would not proceed further

¹ The PPA does not specify that the CPV modules must be manufactured by Soitec but this letter refers to Soitec for ease of reference.

² When Quanta began working with Soitec and CSOLAR in late 2012 as the prospective CPV EPC Contractor the target date for completion of the Soitec equipment supply agreement was March 21, 2013. This was successively pushed back

with the project. See the attached e-mail from Quanta of the same date. However, SDG&E was able to persuade Quanta to reconsider this, and Quanta then continued to work with Soitec and CSOLAR for two months before the security issue mentioned below caused Quanta to exit again. Throughout the three year period since the PPA was signed SDG&E has been extremely proactive in seeking to assist and encourage CSOLAR to be successful in its efforts to incorporate Soitec's technology in the project.

2. Is there a Contractual Dispute between CSOLAR and Soitec? Commissioner Florio asked if there was an underlying contractual dispute between Tenaska and Soitec. You responded that you believed it was much more a dispute of economics and not a contractual dispute. This was partially correct.

Neither CSOLAR nor any other affiliate of Tenaska has a contractual relationship with Soitec. This question wasn't asked, but we also do not have a contractual dispute with SDG&E. Our determination to proceed with the construction of a 100% standard PV project under the current circumstances is clearly provided for under the PPA and there is no basis on which the exercise of this right can be disputed in good faith.

However, the main underlying issue between Quanta and Soitec was not a question of economics. (The economic issue with the Soitec's technology was resolved through certain pricing enhancements approved by the CPUC in the Amended and Restated Second PPA Amendment.) As indicated in the attached March 28 notice from Quanta to Soitec the primary issue was Soitec's inability or unwillingness to post security in the amount and at the time necessary in Quanta's judgment to adequately protect Quanta from the consequences of a default by Soitec under the equipment supply agreement. This was a risk issue for Quanta rather than an economic issue, and Quanta's increasing exposure to a Soitec default was due primarily to schedule compression caused by multiple delays rather than by economics. CSOLAR attempted to bridge the gap between Quanta and Soitec by contributing a \$15 million price increase to help address the security issue. But Quanta and Soitec were still unable to reach agreement. See the attached March 20 and March 28 e-mails to Carol Brown.

3. What is the Effect of CSOLAR Exercising its Right Under PPA Section 2.4(c) to Build the Project using 100% Standard PV Technology? Several Commissioners commented that the project's expected use of CPV technology was an important rationale for approving the higher price in the PPA. These comments seemed to overlook the fact that under the PPA CSOLAR will receive a substantially lower price per MWH as a result of CSOLAR's exercise of its right under Section 2.4(c).

The price difference between CPV and PV results from (1) the PV price per MWH being lower than the CPV price per MWH in the original PPA; (2) a very substantial reduction in the PV price in the First Amendment to the PPA as compared with a much more modest reduction in the CPV price in that amendment; (3) a further reduction in the PV price under the Amended and Restated Second Amendment that applies if CSOLAR exercises its right under Section 2.4(c) to convert the project to 100% PV³; and (4) pricing "enhancements" for CPV in the Amended and Restated Second Amendment that are not applicable for an all PV project.

As a result of these pricing provisions in the original PPA, the First Amendment and the Amended and Restated Second Amendment, CSOLAR's exercise of the conversion right under Section 2.4(c) will now cause the price

to May, June, July, October, November, December of 2013 then January, February and March of 2014. It is understandable that Quanta eventually decided that it was not going to reach a satisfactory resolution with Soitec. A summary of some of the reasons for the more recent delays is included in the attached March 12, 2013 e-mail to Jim Avery of SDG&E.

³ SDG&E insisted on this decrease in order to ensure that CSOLAR would be economically incented to use CPV rather than PV technology.

to be reduced substantially from the price per MWH that would have applied if CSOLAR were able to build the project with a substantial CPV component.

To be clear, the value of the project for Tenaska would be materially greater if Soitec technology could be used. The reduced PPA price that will now apply to MWHs produced using standard PV technology as compared with the much higher price that would have applied to MWHs produced with CPV technology, produces a materially worse result for Tenaska, economically, even after taking account of the fact that the cost of PV technology is much lower than Soitec's CPV technology. CSOLAR had a powerful incentive to use CPV technology in the project if that were feasible. Unfortunately, it was not.

SDG&E can verify that Tenaska had a strong incentive to succeed with Soitec technology, if possible. A major purpose of the pricing changes in the Amended and Restated Second Amendment that the Commission approved on December 5 of last year was to ensure that Tenaska's financial incentives favored Soitec CPV technology, and the amendment did achieve that purpose.

Finally, it was apparent that there is a great deal of disappointment on the part of the Commissioners over the current situation. CSOLAR is also disappointed, as its economics have been adversely affected by the inability to use Soitec technology. CSOLAR is now attempting to deliver to its customer SDG&E a PV project as is required under the terms of the PPA. Our actions have been appropriate and are entirely consistent with our rights and obligations under the PPA. We would welcome the opportunity to discuss these matters with you.

Please feel free to contact me if you have any questions about the information provided above.

Very truly yours,



Barton D. Ford
Vice President
bford@tenaska.com
(817) 462-1033

CC:

President Michael R. Peevey
Commissioner Mike Florio
Commissioner Carla J. Peterman
Commissioner Michael Picker
Commissioner Catherine J.K. Sandoval
Ms. Carol Brown, Chief of Staff to President Peevey

ATTACHMENTS

1. March 28, 2014 E-Mail from Chris Laursen (Quanta) to Bart Ford (CSOLAR)
2. March 28, 2014 E-Mail from Chris Laursen to Andre-Jacques Auberton-Herve (Soitec) and Bart Ford
3. March 28, 2014 Notice to SDG&E pursuant to PPA Section 2.4(c)
4. January 27, 2014 E-Mail from Chris Laursen (Quanta) to Nicholas Borman (CSOLAR)
5. March 12, 2014 E-mail from Bart Ford to James Avery (SDG&E)
6. March 20, 2014 E-Mail from Bart Ford to Carol Brown (President Peevey's Chief of Staff)
7. March 28, 2014 E-Mail from Bart Ford to Carol Brown

1. **March 28, 2014 E-Mail from Chris Laursen (Quanta) to Bart Ford (CSOLAR)**

From: Laursen, Christian [mailto:CLaursen@quantapower.net]

Sent: Friday, March 28, 2014 10:49 AM

To: Ford, Barton

Subject: IV West - Negotiations with Soitec

Bart,

With great disappointment I must advise that Quanta has been unable to reach an acceptable agreement on the ESA with Soitec for the IV West project. We therefore have no choice but to terminate our negotiations with Tenaska for the EPC contract.

Regards,
Chris

2. March 28, 2014 E-Mail from Chris Laursen to Andre-Jacques Auberton-Herve (Soitec) and Bart Ford

From: Laursen, Christian [mailto:CLaursen@quantapower.net]

Sent: Friday, March 28, 2014 10:50 AM

To: Andre-Jacques AUBERTON-HERVE

Cc: Ford, Barton

Subject: Re: Soitec Answer 27th of March 2014

Andre,

Quanta has carefully reviewed your latest proposal. We find that the key gaps remain, in particular the timing of the posting of security. Soitec's position on security, which you have indicated as final, would leave Quanta exposed to significant unsecured financial losses in the event of a Soitec default, which is unacceptable.

I am very disappointed that the repeated delays in reaching agreement on this project over the last 16 months, and subsequent schedule compression, has resulted in a project risk profile that is significantly greater than originally planned, and it has become clear that the parties are unable to agree on an acceptable allocation of this heightened risk.

Quanta has notified Tenaska that we are unable to reach an acceptable contractual agreement with Soitec, and are therefore terminating negotiations on this project.

Regards,
Chris

3. March 28, 2014 Notice to SDG&E pursuant to PPA Section 2.4(c)

CSOLAR IV WEST, LLC

March 28, 2014

San Diego Gas & Electric Company
8330 Century Park Court Cp33A San
Diego, California 92123-1530
Attn: Contract Administration
Facsimile: (858) 650-6190

Re: Notice Pursuant to Section 2.4(c) of the CSOLAR IV West Power
Purchase Agreement

Reference is made to that certain Power Purchase Agreement, as amended by that certain First Amendment to Power Purchase Agreement, made as of October 1, 2011 and by that certain Amended and Restated Second Amendment to Power Purchase Agreement, made as of October 28, 2013 (as so amended, the "PPA"), each between San Diego Gas & Electric Company, a California corporation ("Buyer") and CSOLAR IV West, LLC, a Delaware limited liability company ("Seller"). Capitalized terms used herein but not otherwise defined herein shall have the meanings given in the PPA.

Pursuant to Section 2.4(c) of the PPA, Seller provides Notice to Buyer that as of the date of this Notice Seller was not able to achieve, on terms reasonably acceptable to Seller, the objectives set forth in the definition of Diligent Efforts. Accordingly, Seller provides Notice to Buyer that the Project will be constructed using 100% PV Panels.

For your reference, the definition of "Diligent Efforts" is as follows:

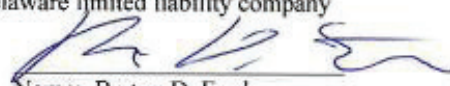
"'Diligent Efforts' means (a) attempting to complete financeable EPC Contracts and (b) if the EPC Contracts are executed by all parties thereto and an equipment supply agreement between the CPV EPC Contractor and the supplier of concentrating solar photovoltaic electric generating units has been executed by both parties thereto, in each case on or prior to November 30, 2013 or such later date, if any, as determined by Seller to be reasonably practicable, and if the CPUC has approved this Second Amendment on or prior to the CPUC Approval Deadline Date, seeking debt and equity commitments for such a Project (a portion of which is

comprised of concentrating solar photovoltaic electric generating units), in each case in a manner consistent with the experience and reputation of Seller and its affiliates as a leading developer of utility scale power projects and with due consideration to any suggestions made by Buyer pursuant to Section 2.2(a)."

CSOLAR IV WEST, LLC

A Delaware limited liability company

By:

A handwritten signature in blue ink, appearing to read "B. D. Ford", is written over a horizontal line.

Name: Barton D. Ford

Title: Vice President

4. January 27, 2014 E-Mail from Chris Laursen (Quanta) to Nicholas Borman (CSOLAR)

From: Laursen, Christian [<mailto:CLaursen@quantapower.net>]

Sent: Monday, January 27, 2014 3:14 PM

To: Borman, Nicholas

Cc: Jones, Andy; Gaëtan Borgers; Mark Richards; Wisenbaker, Randall; RT Weber; McCann, John

Subject: Re: CSolar West Revised Proposal dated 01-23-2014

Nick/Andy,

Confirming our discussions on Friday, Quanta wishes to advise Tenaska that we are formally ending our pursuit of this project. We do not believe it is in our best interest to continue expending resources between now and June, given what we believe are our limited chances of success.

Please call if you wish to discuss.

Chris

5. March 12, 2014 E-mail from Bart Ford to James Avery (SDG&E)

From: Ford, Barton
Sent: Wednesday, March 12, 2014 10:51 AM
To: 'Avery, James'
Cc: Case, Steve (SCase@semprautilities.com); dbaerman@semprautilities.com; 'Roberts, Ted - E&FP'; Stallmeyer, James; Van Dyke, Greg
Subject: RE: IV West Project

Dear Jim,

Further to my email of March 5, this email is an additional update of where we now stand on our IV West project EPC contract and related activities.

To set the context, when we entered 2013, the target for completion of the Quanta EPC contract was March 31, 2013 and the target financial closing date was June 1, 2013.

As we entered 2014, the target financial closing date had moved back twelve months, to June 1, 2014. However, it is clear now that because of a number of disruptions in the effort to complete the EPC contract, June 1, 2014 is no longer achievable. The recent disruptions in the EPC contract negotiation schedule have included:

- Quanta withdrawing from the process in January and then re-engaging at the urging of SDG&E
- Soitec's replacement of its lead negotiator a few weeks ago
- Soitec's changes in position on the amount of security that it would post to Quanta
- A shift by Quanta from reliance on block 1 testing to reliance on the testing of Soitec's other projects once it became clear that there was no time to wait for results of block 1 testing in order to proceed with construction of subsequent CPV blocks
- Very significant delays in the testing of Soitec's Newberry Springs and Touwsrivier projects
- Soitec's position that, notwithstanding its commitment to Quanta last summer to indemnify, and to provide security for the indemnification obligation to, Quanta for a certain amount of losses should a "switch" be required due to Soitec's default and termination, this indemnity and related security would not apply if a switch were to occur because of a default and termination resulting from testing failures at Soitec's Touwsrivier or Newberry Springs projects
- An increase in PV panel pricing which has made it necessary for Quanta to increase the EPC contract price for a "switch" by an additional \$9 to \$10 million, and

- Due to the passage of time and other factors, Quanta's change in the dates that it would guarantee for completion in the case of a "switch" at the worst possible time.

On March 10 Quanta advised Soitec and Tenaska that they are again withdrawing from the project, this time as a result of Soitec's inability or unwillingness to post security in an amount necessary to protect Quanta against losses that Quanta would incur should Soitec default under its Equipment Supply Agreement.

This has been a complicated, difficult process for everyone, and all three parties have tried hard to get to an EPC contract that can work, including by having spent 2-1/2 weeks in person in three party meetings over the past five weeks. But it has become clear that the schedule no longer works. Quanta is not willing to commit to the necessary construction schedule unless Soitec posts substantial additional security in order to cover the Soitec default exposure for the compressed schedule, and as noted above Soitec is not willing or is not able to post the additional security that is required.

Even assuming that the EPC contract schedule issues could have been resolved immediately through a decision by Soitec to post additional security to Quanta (or by Quanta agreeing not to require the additional security), the best case schedule for EPC contract execution is late March (as compared with the November 30, 2013 target date in Amended and Restated Second Amendment, which we executed in late October 2013), and the best case financial closing date if we were to continue pursuing the hybrid approach would be August 1, 2014. August is beyond the financial closing condition precedent deadline date in the PPA, and in any case if we were to continue incurring the interconnect construction costs and other project costs necessary to stay on the required project completion schedule our balance sheet development cost exposure would be more than \$50 million by August. A cost exposure in this amount prior to financial closing is not acceptable to Tenaska given the continuing uncertainty that we will be successful financing CPV technology.

The effort that Tenaska has engaged in over the past 12 months has not been without cost. During this past year, interest rates and PV panel prices have gone up significantly, and the price discount that we agreed to in the Amended and Restated Second Amendment for a conversion to 100% PV hurts our economics for a 100% PV project. Our estimate is that the total PPA revenue reduction, including not just the discount but also the underlying difference between PV pricing and CPV pricing, will be well in excess of \$[REDACTED] million over the 25 year term of the PPA for the same amount of production.

At this point, we see no realistic prospect for obtaining a satisfactory EPC contract from Quanta, and we are turning our attention to the contracting for a full PV project.

Please let me know if you would like to discuss.

Bart

6. March 20, 2014 E-Mail from Bart Ford to Carol Brown (President Peevey's Chief of Staff)

----- Original message -----

From: "Ford, Barton"

Date: 03/20/2014 1:27 PM (GMT-08:00)

To: "Brown, Carol A."

Cc: "Picker, Michael" , Raul DeLaRosa , ":", Patricia Eckert , "Olberg, Delette"

Subject: CSolar West Project - Proposed Resolution of Security Impasse

Dear Carol,

Thank you for your time last Thursday to discuss our IV West project. I am attaching some additional background information regarding the efforts that Tenaska has undertaken over the past three years to use Soitec technology and the risks that we now face.

Following up on our call, our senior management group met on Monday and Wednesday to discuss whether there is anything further we can do to address the impasse between Soitec and Quanta on credit/security issues and Quanta's withdrawal from negotiations.

There is a total gap of \$15 million between the security requested by Quanta and the amount proposed by Soitec. The timing of the posting of this security is also at issue. The security is to assure the payment of Soitec's liability to Quanta in the event that a "switch" to PV is required due to Soitec's default under the Soitec Equipment Supply Agreement (ESA). The large liability in this situation is a result of the fact that Quanta must commence construction of subsequent CPV blocks without knowing whether earlier CPV blocks are going to pass their acceptance testing, raising the possibility of the need for large amounts of CPV equipment to be ripped out and replaced after Quanta has already paid for it.

We are prepared to help resolve the impasse by offering to bridge the gap by covering the \$15 million that Soitec is unable or unwilling to provide,. The general terms of our offer are summarized in the attached "Proposed Resolution of Security Impasse". Our plan of action is to authorize Soitec to see if they can use this \$15 million offer to resolve the security issue with Quanta and induce Quanta to resume negotiations. I will keep you advised of Soitec's progress with Quanta, assuming that Soitec is willing to try to resolve the issue with Quanta on this basis.

Regards,

Bart

Barton D. Ford

Vice President, Development

Tenaska, Inc.

1701 E. Lamar Blvd., Suite 100

Arlington Texas 76006

(817) 462 1033

bford@tenaska.com

7. March 28, 2014 E-Mail from Bart Ford to Carol Brown

From: Ford, Barton [<mailto:bford@tnsk.com>]
Sent: Friday, March 28, 2014 10:20 AM
To: Brown, Carol A.
Cc: Picker, Michael; Dellosa, Joel <JDellosa@semprautilities.com> (JDellosa@semprautilities.com);
Nancy.McFadden@gov.ca.gov; Olberg, Delette
Subject: RE: CSolar West Project - Proposed Resolution of Security Impasse

Carol,

We received formal notice this morning that Quanta has terminated discussions with respect to the CSOLAR West project as they could not reach agreement with Soitec regarding the timing of security posting (notwithstanding our offer to contribute \$15 million to the solution) and other issues.

Accordingly, we have notified SDG&E under the terms of our PPA that we were not able to enter into an acceptable EPC contract for a project that would include 67 MW of CPV technology. This triggers the conversion of the project to 100% PV.

We have spent many millions of dollars and many thousands of hours to try to be successful with Soitec content in the project. I am sorry that we were not able to do that but at this point we must proceed with a project that we are able to do.

Delette and I plan to be in California next week. Please let us know if you would like to meet to talk about this further.

Regards,

Bart

ATTACHMENT B

Correspondence dated December 4, 2014



James P. Avery
SVP – Power Supply
San Diego Gas & Electric Company
8315 Century Park Court
San Diego, CA 92123

December 4, 2014

Peder Norby, Chairman
County of San Diego
Planning & Development Services
5510 Overland Avenue, Suite 110
San Diego, CA 92123

Re: SDG&E Supports Permitting of Soitec's Rugged and Tierra del Sol CPV Projects in Boulevard

Dear Chairman Norby:

Soitec submitted two projects in early 2012 for review and approval of San Diego County to issue Major Use Permits for the projects near Boulevard utilizing Soitec's concentrating photovoltaic technology. The Tierra Del Sol and Rugged Solar projects are expected to go to public hearing soon, nearly two and a half years after their application was submitted.

These projects have been undergoing environmental review and preparation of an Environmental Impact Report (EIR) by the County of San Diego pursuant to the California Environmental Quality Act (CEQA).

SDG&E submits this letter of support for the expeditious approval of these projects. The Soitec projects, along with other San Diego County renewable energy projects, will provide numerous local benefits including:

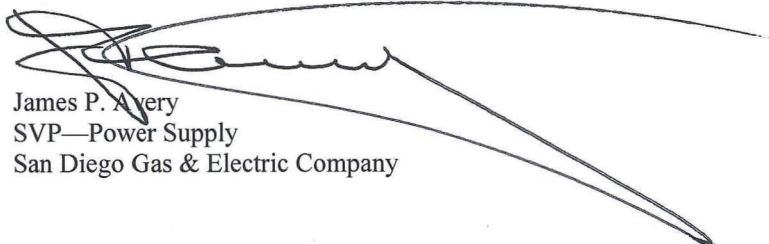
- Help California utilities, including SDG&E, achieve the State's renewable energy goals of providing 33% renewable energy to our customers by 2020.
- Improve air quality through the offset of greenhouse gas emissions in California.
- Provide local jobs for the engineering, procurement, and construction of the projects.
- Provide local benefits to the Boulevard area.

Additionally, SDG&E has issued its 2014 All Source Request for Offers ("RFO") to solicit bids in accordance with Decision (D.) 14-03-004 – Decision Authorizing Long-Term Procurement for Local Capacity Requirements due to Permanent Retirement of the San Onofre Nuclear Generation Station (the "Track 4 Decision"). Expeditious approval of these projects may allow them to be considered in SDG&E's RFO, in which all bids are due January 5, 2015.

SDG&E has seen incredible progress with our renewable energy contract portfolio. SDG&E is dedicated to meeting the state's clean energy goals and delivered more than 23 percent renewable energy last year and expects to be the first investor-owned utility to reach 33 percent early next year, six years ahead of schedule.

SDG&E has made significant progress in siting renewable energy projects in the Imperial Valley and transporting clean energy to our customers in San Diego and Southern Orange Counties utilizing the Sunrise Powerlink. Development of renewable projects in San Diego County should be just as prevalent.

Sincerely,



James P. Avery
SVP—Power Supply
San Diego Gas & Electric Company



James P. Avery
SVP—Power Supply
San Diego Gas & Electric Company
8315 Century Park Court
San Diego, CA 92123

December 4, 2014

The Honorable Chairwoman Dianne Jacob
San Diego County Administration Center
1600 Pacific Highway, Room 335
San Diego, CA 92101

Re: SDG&E Supports Permitting of Soitec's Rugged and Tierra del Sol CPV Projects in Boulevard

Dear Chairwoman Jacob:

Soitec submitted two projects in early 2012 for review and approval of San Diego County to issue Major Use Permits for the projects near Boulevard utilizing Soitec's concentrating photovoltaic technology. The Tierra Del Sol and Rugged Solar projects are expected to go to public hearing soon, nearly two and a half years after their application was submitted.

These projects have been undergoing environmental review and preparation of an Environmental Impact Report (EIR) by the County of San Diego pursuant to the California Environmental Quality Act (CEQA).

SDG&E submits this letter of support for the expeditious approval of these projects. The Soitec projects, along with other San Diego County renewable energy projects, will provide numerous local benefits including:

- Help California utilities, including SDG&E, achieve the State's renewable energy goals of providing 33% renewable energy to our customers by 2020.
- Improve air quality through the offset of greenhouse gas emissions in California.
- Provide local jobs for the engineering, procurement, and construction of the projects.
- Provide local benefits to the Boulevard area.

Additionally, SDG&E has issued its 2014 All Source Request for Offers ("RFO") to solicit bids in accordance with Decision (D.) 14-03-004 – Decision Authorizing Long-Term Procurement for Local Capacity Requirements due to Permanent Retirement of the San Onofre Nuclear Generation Station (the "Track 4 Decision"). Expeditious approval of these projects may allow them to be considered in SDG&E's RFO, in which all bids are due January 5, 2015.

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SDG&E has made significant progress in siting renewable energy projects in the Imperial Valley and transporting clean energy to our customers in San Diego and Southern Orange Counties utilizing the Sunrise Powerlink. Development of renewable projects in San Diego County should be just as prevalent.

Sincerely,

A handwritten signature in black ink, appearing to read "James P. Avery", is written over a horizontal line. The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

James P. Avery
SVP—Power Supply
San Diego Gas & Electric Company

ATTACHMENT C

*Soitec Reference Document and Annual
Financial Report 2013-2014*

REFERENCE DOCUMENT | 2013-2014



REFERENCE DOCUMENT AND ANNUAL FINANCIAL REPORT 2013-2014

Summary

1.	Persons Responsible	1	9.	Review of Financial Position and of Profit or Loss	29
1.1.	Person Responsible for the Registration Document	1	9.1.	Group's financial position and profit or loss	29
1.2.	Affidavit provided by the person responsible for the Registration Document	1	9.2.	Company's financial position and profit or loss	32
2.	Statutory Auditors	1	10.	Cash and Equity	33
3.	Selected Financial Information	1	10.1.	The Group's short and medium-term equity	33
4.	Risk Factors	2	10.2.	Sources and amounts of Group cash flows	33
4.1.	Risks related to the Company's Business	2	10.3.	Group borrowing conditions and financing structure	33
4.2.	Legal risks	5	10.4.	Restrictions on the use of capital	33
4.3.	Risks of dependence on third parties	6	10.5.	Information on anticipated sources of financing	33
4.4.	Market risks	7	11.	Research and Development, patents and licenses	33
4.5.	Insurance risk coverage	10	11.1.	The Soitec Group's Research and Development Policy	33
5.	Information about the Company	10	11.2.	Research and Development Cost Accounting	34
5.1.	History and development of the Company	10	12.	Information on trends	34
5.2.	Investments	11	12.1.	Principal trends that had an impact on operations during the 2013-2014 fiscal year	34
5.3.	Environmental information	12	12.2.	Any known trends, uncertainties, demands, commitments or events reasonably likely to affect the Company's outlook	34
5.4.	Company information	19	13.	Profit forecasts or estimates	35
6.	Business overview	22	13.1.	Assumptions based on forecasts	35
6.1.	Main activities	22	13.2.	Statutory Auditors' report on the forecasts included in the Registration Document for the year ended March 31, 2013	35
6.2.	Principal markets	26	13.3.	Long-term objectives	35
6.3.	Exceptional events	27	14.	Administrative, Management, and Executive Management Bodies	35
6.4.	Issuer's dependence on patents or licenses, on industrial, commercial or financial contracts, or on new manufacturing processes	27	14.1.	Information and disclosures about the Administrative and Management bodies	35
6.5.	Competitive position	27	14.2.	Conflicts of interest at the Administrative and Management bodies	41
7.	Organizational Structure	27	15.	Compensation and benefits	42
7.1.	The Group	27	15.1.	Compensation Paid to executives (CEO, COO, board members) during fiscal year 2013-2014	42
7.1.	The Group	27	15.2.	Amounts set aside or accrued to provide Pension, Retirement or Other Benefit Payments	44
7.2.	List of the company's subsidiaries and stakeholdings	28	16.	Governance of Administrative or Management bodies	45
8.	Real Estate, production plants and equipments	28	16.1.	Directors' and Managers' terms of office	45
8.1.	Significant or Planned Tangible Fixed Assets	28	16.2.	Service contracts providing future benefits	45
8.2.	Environmental issues that may affect the Company's use of its tangible fixed assets	29	16.3.	Committees of the Board of Directors	45
			16.4.	Statement on Corporate Governance	47

16.5. Other notable issues on corporate governance, procedures, and internal control	47
17. Employees	54
17.1. Number of employees	54
17.2. Shareholding and stock options	59
18. Main shareholders	63
18.1. Company's shareholding at March 31, 2014	63
18.2. Different voting rights	63
18.3. Control of the Company	63
18.4. Agreement which may lead to a change of control	63
19. Related party transactions	64
20. Financial information: assets, financial position and results	65
20.1. Historical financial information	65
20.2. Pro-forma financial information	65
20.3. Financial Statements	65
20.4. Verification of historical financial information	103
20.5. Date of the last financial information	104
20.6. Interim financial information and other information	104
20.7. Dividend payment policy	104
20.8. Lawsuits and arbitration proceedings	104
20.9. Significant changes in the financial or commercial position since March 31, 2014	104
21. Additional Information	104
21.1. Share capital	104
21.2. Articles of incorporation and bylaws	116
21.3. Statutory Auditors' fees	118
22. Material contracts	118
23. Information from third parties, declarations by experts and declarations of interests	119
24. Documents Available to the Public	119
24.1. Documents Available on the Company's Website	119
24.2. List of Press Releases and Other Publications	119
25. Information on shareholdings	121
26. Company's financial instrument market	121
27. Glossary	123
28. Cross-reference table	124
29. Identification card	129
30. Detailed Table of Contents	129
31. Board of Directors' report to the Shareholders' Meeting and draft resolutions	132

The Chairman must prepare a report on the internal control and management procedures existing in the Company, and also giving the other information required by article L. 225-37 of the French Commercial Code concerning corporate governance procedures which he must ask the Board of Directors to approve.

We must:

- inform you of our remarks on the information in the Chairman's Report on the internal control and risk management procedures for preparing and processing accounting and financial information; and
- certify that this report contains the other information required by article L. 225-37 of the French Commercial Code, although we do not have to verify the accuracy of this additional information.

We performed our work according to professional standards applicable in France.

[Information on the internal control and risk management procedures for preparing and processing accounting and financial information.](#)

Professional standards require that diligences be undertaken to assess the genuineness of the information on the internal control and risk management procedures for preparing and processing the accounting and financial information in the Chairman's Report. These diligences involve, in particular:

- examining the internal control and risk management procedures when preparing and processing the accounting and financial information, underlying the information presented in the Chairman's Report, and existing documentation;
- examining the work which enabled this information and the existing documentation to be prepared;
- deciding whether the major deficiencies in internal control and risk management when preparing and processing the accounting and financial information we may have found during our assignment were properly documented in the Chairman's Report.

Based on these works, we have no comments to make on the information on the Company's internal control and risk management procedures for preparing and processing the accounting and financial information in the Report of the Chairman of the Board of Directors, established in accordance with article L. 225-37 of the French Commercial Code.

Other information

We certify that the Report of the Chairman of the Board of Directors includes the other information required by article L. 225-37 of the French Commercial Code.

Neuilly-sur-Seine and Meylan, May 13, 2014

The Statutory Auditors

PRICEWATERHOUSECOOPERS Audit
Philippe Willemin

Cabinet Muraz Pavillet
Christian Muraz

17. Employees

17.1. Number of employees

Workforce on March 31, 2014

The employees are distributed over the various geographic zones as follows:

- EUROPE
 - o Bernin (Soitec S.A.)/Paris sud (Soitec Specialty Electronics S.A.S.)/ Montbonnot (Altatech Semiconductor S.A.S.): activity Electronics;

- o Paris centre (Soitec Solar France S.A.S.): activity – Solar Energy ;

- o Freiburg and its subsidiaries (RSA and Chile): activity - Solar Energy.

– ASIA

- o Singapore, Japan, South Korea, China and Taiwan: activity Electronics.

– UNITED STATES

- o Peabody (Soitec U.S.A Inc.) and Phoenix (Soitec Phoenix Labs Inc.): activity - Electronics and Lighting;

- o San Diego: activity - Solar Energy.

As of March 31, 2014, the total number of employees was 1,291 of which 68 were of a temporary nature. The average age is 39.5 years.

The workforce breaks down as follows:

Workforce status	France Bernin Paris centre and sud/ Montbonnot	Europe Freiburg and subsidiaries	Asia China Singapore Japan Korea Taiwan	U.S.A Peabody Phoenix	U.S.A San Diego	Group Total
Workforce as of 03/31/2014	929	134	12	43	173	1,291
- temporary	29	19	-	-	20	68
Average age	39.0	36.7	44.0	44.8	42.6	39.5
Turnover rate	5.1 %	11.9 %	25.9 %	16.5 %	16.3 %	8.4 %
Workforce variations for 2013-2014	(156)	(88)	(99)	(13)	34	(322)
- operators	(50)	(60)	(15)	(4)	26	(103)
- technicians & employees	(56)	(10)	(29)	(1)	11	(85)
- engineers & management	(50)	(18)	(55)	(8)	(3)	(134)
- new hires	17	8	-	5	92	122
- resignations	34	16	14	6	16	86
- Employment plans (PSE)	53	27	82	-	5	167
-lay-offs	5	-	-	-	12	17
Distribution by category						
- Operators	25 %	9 %	0 %	7 %	47 %	25 %
- Technicians & employees	34%	29 %	8 %	30 %	17 %	31 %
- Engineers & management	41 %	62 %	92 %	63 %	35 %	44 %
Distribution by activity						
- Administrative staff	17%	19 %	25 %	12%	16 %	17 %
- Sales & Marketing	3 %	13 %	67 %	14 %	5 %	5 %
- R&D	20 %	26 %	0%	26 %	1 %	18 %
- Production	60 %	41 %	8%	49 %	79 %	60 %

Evolution of the Soitec workforce

The workforce decreased by a total of 322 employees compared to the fiscal year ended March 31, 2013, a decline of 20%.

ATTACHMENT D

Soitec 2014-2015 Financial Report H1 Results



2014-2015 H1 Results

André-Jacques Auberton-Hervé, Chairman and CEO

Olivier Brice, CFO

Bastian Warkus, SVP Finance & Strategy

November 2014



November 19th, 2014

Solar

Large pipeline of projects with PPAs in place and further in development

Project	MWp	Region	COD	Project developed by Soitec	Project developed by third party
---------	-----	--------	-----	-----------------------------	----------------------------------

Construction

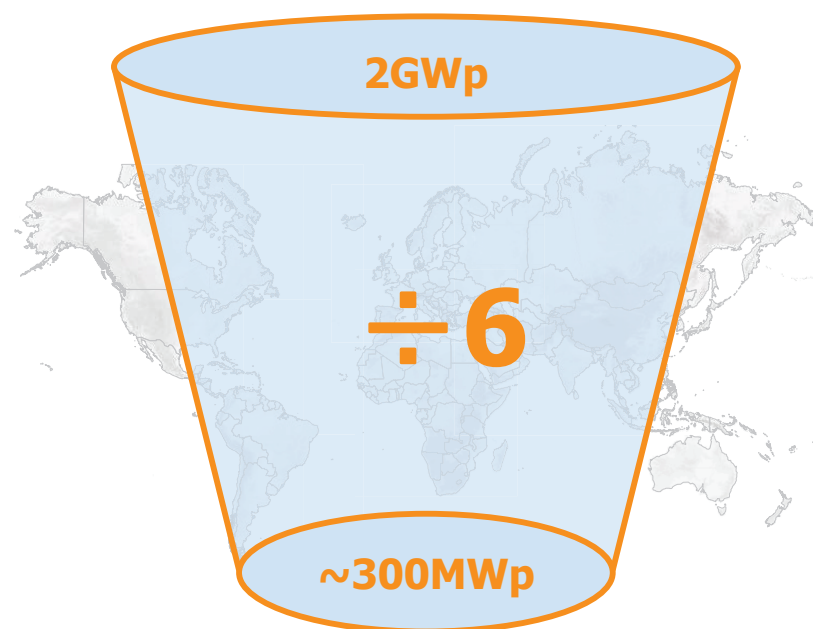
Touwsrivier	44	South Africa	2014	✓	
Alcoutim	1.3	Portugal	2014		✓
ESTCP	1.1	US	2014	✓	
Tabuk	1.1	KSA	2014		✓

Pipeline

CRE 1 Megasol	2.1	France	2015		✓
CRE 1 Calisanne	4.1	France	2015		✓
CRE 1 Aigaliers	3.1	France	2015		✓
CRE 1 Signes	1.8	France	2015		✓
CRE 2	>50	France	TBC		✓
Southlight 1	37	US	2016		✓
Southlight 3	58	US	2016		✓
Southlight 4	104	US	2016		✓
Desert Green	7	US	2014		✓

Early to mid-stage projects

Select projects under assessment for co-development with reasonable probability that an offtake agreement can be secured



Advanced pipeline

Projects with executed PPA

A large pipeline backed by PPA to be constructed over the next 2 years and further projects in development

VERIFICATION

I am an employee of the respondent corporation herein, and am authorized to make this verification on its behalf. The matters stated in the foregoing **RESPONSE OF SAN DIEGO GAS AND ELECTRIC COMPANY TO APPLICATION OF SOITEC SOLAR INDUSTRIES LLC FOR MODIFICATION OF RESOLUTION E-4613** are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 22nd day of December, 2014, at San Diego, California

/s/ Victor Vilaplana

Victor Vilaplana

Vice President - Electric & Fuel Procurement